

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

IBLA 82-1141  
ANCAB VLS 80-37

Decided October 5, 1982

Appeal from the decision of the Alaska State Office, Bureau of Land Management, holding lands to be proper for village selection and approving them for patent. AA-6658-A.

Affirmed.

1. Alaska Native Claims Settlement Act: Appeals: Standing

When lands are withdrawn for an air navigation site for the benefit of the Territory of Alaska, the withdrawal was not rescinded upon statehood, and the State of Alaska continued operation of the air navigation site, the State has standing to assert a claim of property interest within the meaning of 43 CFR 4.902 for the purposes of appealing the status of the air navigation site.

2. Alaska Native Claims Settlement Act: Conveyances: Interim Conveyance -- Alaska Native Claims Settlement Act: Conveyances: Reconveyances -- Alaska Native Claims Settlement Act: Conveyances: Valid Existing Rights: Generally

When the State of Alaska has continued operation of an air navigation site on land withdrawn for such use but has never made application for the withdrawn land under any Federal law, the State has no valid existing right within the meaning of sec. 14(g) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(g) (1976). However, the State's interest in the air navigation site is adequately

protected where BLM's decision provides that a grant of the land to a village will be subject to sec. 14(c) of ANCSA, as amended, 43 U.S.C. § 1613(c) (Supp. IV 1980), since subsec. (c)(4) requires the grantee to convey title to the State together with such additional acreage and/or easements as are necessary. No further provision is necessary to fulfill the Secretary's duty under 43 CFR 2641.6(b) to include in the conveyance covenants necessary to fulfill the obligations imposed by sec. 14(c)(4).

State of Alaska, 7 ANCAB 157, 89 I.D. 321 (1982), modified to the extent inconsistent.

APPEARANCES: Martha Mills, Esq., Assistant Attorney General, State of Alaska, Anchorage, Alaska, for appellant; M. Francis Neville, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management; James B. Gottstein, Esq., Anchorage, Alaska, for Ahtna, Inc.

#### OPINION BY ADMINISTRATIVE JUDGE STUEBING

On July 18, 1980, the Alaska State Office, Bureau of Land Management (BLM), issued a decision approving land for village selection and for patent to Kluti-Kaah Corporation (Kluti-Kaah) and Ahtna, Inc (Ahtna). Ahtna has succeeded to the interest of Kluti-Kaah in this appeal. The State of Alaska, Department of Transportation and Public Facilities, appealed this decision because BLM had failed to exclude the Copper Center Airport No. 1 from the land approved for patent. <sup>1/</sup> Alaska's interest in the subject land arises from Exec. Order No. 8916, 6 FR 5247 (Oct. 15, 1941), which withdrew the subject lands from appropriation under the public land laws, including the mining laws, and reserved it for the use of the Alaska Road Commission, Department of the Interior, for aviation purposes. The State claims that it was entitled to receive a patent for this land at some prior time, but the State had never filed an application and no conveyance was ever issued. Accordingly, BLM has moved to dismiss this appeal, contending that the State has no property interest sufficient to confer standing to appeal under 43 CFR 4.902. AHTNA urges us to take the same action.

[1, 2] Basically, this appeal presents two issues: (1) whether the State's interest in the subject land is sufficient to confer standing under 43 CFR 4.902; and (2) whether this land must be excluded from the conveyance. In a similar case, these issues were recently considered and resolved by the

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<sup>1/</sup> This appeal was originally docketed with the Alaska Native Claims Appeal Board as ANCAB VLS 80-37. That Board was abolished effective June 30, 1982, by Secretarial Order No. 3078, dated Apr. 29, 1982, and its functions were consolidated under jurisdiction of this Board. 47 FR 26390 (June 18, 1982).

now defunct Alaska Native Claims Appeal Board (ANCAB). State of Alaska, 7 ANCAB 157, 89 I.D. 32 (1982). In that case, land had been withdrawn for an air navigation site that was being operated by the State of Alaska. No specific transfer of title had ever been requested or given. BLM had not excluded the site from land approved for patent to a Native village. In that decision, ANCAB held that when lands are withdrawn for an air navigation site for the benefit of the Territory of Alaska, and the withdrawal order was not rescinded upon statehood, and when the State continued operation of the air navigation site, the State has standing to assert a claim of property interest within the meaning of 43 CFR 4.902 for the purposes of appealing the decision affecting that site. That Board further held, however, that the site did not constitute a valid existing right under section 14(g) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1613(g) (1976), and that it would not be appropriate to exclude the land from the patent. ANCAB determined that the State's interest in this site is protected under section 14(c)(4) of ANSCA, 43 U.S.C. § 1613(c)(4) (Supp. IV 1980), which requires the Native corporation to convey title to the State together with such additional acreage and/or easements as are necessary. The decision under appeal provides that the grant to AHTNA shall be subject to the requirements of section 14(c) that the grantee reconvey those portions of the grant as prescribed in that section. In State of Alaska, supra, at 181-2, 89 I.D. At 331, ANCAB modified the decision under appeal, requiring BLM to include additionally in the conveyance any and all covenants deemed necessary to ensure the fulfillment of the corporation's obligation under section 14(c)(4). We regard this modification as unnecessary. If the grant provides that it is subject to the requirements of section 14(c), this necessarily includes the requirements of subsection 14(c)(4). No other reasonable construction is possible. <sup>2/</sup> Accordingly, we modify State of Alaska, supra, to the extent that it holds that a decision must specify the precise subsection and paragraph of the statutory provision in order to provide the desired protection. In all other respects, we follow ANCAB's decision.

The arguments made by the parties to this appeal differ little from those raised in State of Alaska, supra. Those arguments were fully considered by ANCAB and require no further elaboration here.

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<sup>2/</sup> The Board appears to have been concerned that a specific reference to sec. 14(c)(4) was necessary to fulfill the Department's obligation to ensure reconveyance of airport sites, since 43 CFR 2651.6 makes this a separate requirement from the obligation under 43 CFR 2651.5 to provide for reconveyance pursuant to 14(c) generally. However, the provision required by the decision under appeal is all that is necessary to meet the requirements of both regulations. Neither regulation requires more.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1(b)(3)(i), as amended, 43 FR 26390 (June 18, 1982), the decision appealed from is affirmed.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Gail M. Frazier  
Administrative Judge

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Bruce R. Harris  
Administrative Judge

